

October 4, 2010

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A235
Washington, D.C. 20554

RE: Implementation of Section 224 of the Act, GN Docket No. 07-245

Dear Secretary Dortch:

Arkansas Electric Cooperative Corporation ("AECC") appreciates being able to provide comments regarding the above matter.

AECC is a generation and transmission cooperative corporation owned by seventeen (17) electric distribution cooperatives in the state of Arkansas. Those seventeen distribution cooperatives serve over sixty percent (60%) of the geographical area of the state of Arkansas and more than 490,000 members.

AECC files these brief comments in support of the position of the National Rural Electric Cooperative Association ("NRECA") in response to the Federal Communications Commission's ("FCC") July 15, 2010 Order and Further Notice of Proposed Rule Making ("NPRM") regarding the Implementation of Section 224 of the Act ("Act").

I. **AECC has a keen interest in the NPRM as it will have a significant impact on its member cooperatives and their ratepayer members.** While 47 U.S.C. Section 224(a) (1) exempts electric cooperatives from the FCC pole attachment jurisdiction, the changes the FCC makes greatly impact cooperatives. FCC regulations often set the bar for pole attachment negotiations between electric cooperatives, as pole owners, and attachers. This is primarily because the Arkansas Public Service Commission ("APSC") gives substantial weight to the FCC rules.

When the Arkansas legislature adopted an act vesting the APSC with pole attachment jurisdiction, the APSC held hearings on the rulemaking to implement that act. The APSC Staff, with one slight change, proposed the FCC rate formula. While the APSC chose to deal with rates on a case by case basis, the Staff recommendation has become the standard in negotiations as attachers are confident that is the formula which will apply. Thus, the actions of the FCC will have strong impact on cooperative member/ratepayers in Arkansas. Those rate formulas already cause cooperatives to under recover their costs attributable to attachments.

In support of NRECA's response, AECC believes that the NPRM is based on a premise that is faulty and unsubstantiated. That is that lower pole attachment rates promote deployment of broadband to rural areas. They do not. They do, however, cause electric cooperatives and their members to incur costs that cannot be passed on to attachers and lead to higher electric rates to cooperative members. This results in a subsidy, or wealth transfer, to the attacher companies and their shareholders. AECC believes the attacher

companies are already extremely profitable in the State of Arkansas and any objective analysis will substantiate that fact. As indicated by NRECA, it is a lack of density that is the deterrent to deployment. And, as a recent study has indicated, because of low income and lack of education in Arkansas, even if available at a reasonable cost many Arkansans are not potential subscribers.

- II. **The desire to speed up broadband deployment through expedited make-ready procedures must be balanced against the need to ensure safe and reliable electric service.** The cable companies state that a persistent source of delay in the make-ready process arises from disputes concerning safety violations that existed on the pole prior to the installation of a new attachment. However, the cooperatives report the biggest challenge in completing make-ready work is not getting all the necessary information from the attachers to perform the proper make-ready decisions. Approximately three-quarters of the cooperatives responding to NRECA's Pole Attachment Study Survey Results (June 2010) indicate foreign pole attachments have a negative impact on their system's reliability. This is a direct result of poor quality aerial placements performed by cable company personnel and contractors and/or unauthorized attachments placed as a result of not adhering to the National Electrical Safety Code ("NESC") and existing cable attachment agreement specifications. The above factors force the cooperatives to subsidize pole attachment rates from member furnished operating capital.

As an example, First Electric Cooperative, in Jacksonville, AR, performed a measured inspection for NESC violations on 20,700 poles with communications attachments. There

were 14,280 poles with one communications attachment and 6,420 poles with two communications attachments. On the 14,280 one user poles inspected, there were 17,028 (1.2 per pole) violations as follows:

1. Clearance (conductor) at the pole-13,069 or 77% of all violations
2. Clearance (conductor) in the mid span-1,863 or 11% of all violations
3. Clearance (ground) in the mid span- 2,096 or 12% of all violations
4. Power work required on 576 poles or 4.1% of poles.
5. Pole change outs needed 479 poles or 3.4% of poles.

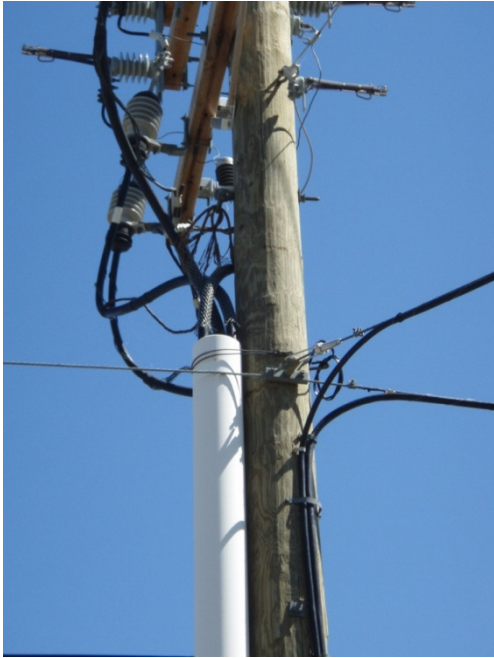
On the 6420 poles inspected with two joint users, there were 16,080 (2.5 per pole) violations as follows:

1. Clearance (conductor) at the pole-11,582 or 72% of all violations
2. Clearance (conductor) in the mid span-1,594 or 10% of all violations
3. Clearance (ground) in the mid span-2,904 or 18% of all violations
4. Power work required on 599 poles or 9.3% of poles.
5. Pole change outs needed 520 poles or 8.1% of poles.

Similarly, Ozarks Electric Cooperative, in Fayetteville, AR, encountered significant damages and unsafe construction practices during a system upgrade by a cable operator on its system during 2001. A summary of the efforts required by Ozarks is provided as an attachment to these comments.

Many Arkansas electric cooperatives have employed full time joint use coordinators to verify attachment counts and NESC violations. These positions have become necessary due to (1) attaching companies not following the pole attachment procedures and (2) continued poor quality of work and increased safety violations on electric cooperative poles. As a consequence, the electric cooperative in Arkansas must devote significant time and resources, both from regulatory and operational standpoints, to deal with the problems of unauthorized attachments and poor quality installation of facilities. The following are examples of communications company attachments discovered on electric cooperative poles;





In an attempt to reduce time to market, one of the options under consideration is allowing the communications companies to “hire outside contractors to perform make-ready work” to expedite schedules, and circumvent normal make-ready time frames. As witnessed in the above photographs, Arkansas cooperatives are greatly concerned with the communications companies’ lack of attention to detail and safety standards as they construct their own facilities on cooperative poles, and are therefore unwilling to consider having those entities perform electrical work on cooperative poles.

Of equal concern to AECC is the volume of “unauthorized” or otherwise unreported attachments. An unauthorized attachment is simply an attachment that required the utility’s review and approval, but has instead been installed outside the terms of the contract. A summary of unauthorized attachments from inventories conducted by five AECC member cooperatives (First Electric, Woodruff Electric, Farmers Electric, Clay Electric, and Southwest Electric) in Arkansas indicated the following results:

Cable Company Results:

1. Previously reported poles – 42,413 attachments
2. Present poles with attachments as a result of the inventory – 63,987
3. Unauthorized poles with attachments – 21,574
4. Percentage of unauthorized attachments - 50.9%
5. Percent safety violations - 46.29%

Combined Results With All Pole Attachees:

1. Previously reported poles – 76,837 attachments
2. Present poles with attachments as a result of the inventory – 100,424

3. Unauthorized poles with attachments - 23,587
4. Percentage of unauthorized attachments - 30.7%
5. Percent safety violations - 41.28%

In summary, safety audits performed on four electric cooperatives in Arkansas (First Electric, Farmers Electric, Southwest Electric and Woodruff) determined that on 75% of the poles with attachments, there was an average of 1.5 safety violations per pole.

Unauthorized attachments on electric cooperative poles in Arkansas coupled with the poor quality construction by the cable companies and the disregard for existing agreement procedures negatively impacts the Arkansas electric cooperatives' ability to provide safe and reliable electric service. Similarly, it increases our pole related costs. We realize the FCC's goal is to maintain fairness and we respectfully ask that rules arising from the NPRM not increase the cost of business and shift burdens to the electric utilities.

III. Lowering pole attachment rates will not help spur broadband deployment in rural and sparsely populated areas. The NPRM's premise that lower pole attachment rates will lead to deployment is faulty and unsubstantiated. The question is what deters broadband companies from extending to remote sparsely populated areas. Attachers would have you believe it is pole attachment rates. That is not the case.

NRECA's comments indicate that the real reason is the lack of subscriber density which makes it unprofitable for broadband companies to extend services to these remote areas. The experience of AECC's distribution cooperative members verifies this as well. In

Arkansas, there are other forces at work which, presently, appear to make such deployment premature and ultimately unprofitable for these companies.

The Arkansas Legislature adopted Act 604 in 2007. That act authorized the formation of "Connect Arkansas" as a nonprofit organization to promote education concerning deployment of broadband service. Connect Arkansas conducted a survey of Arkansans to assist in its mission. The results are quite interesting and informative about broadband availability and the likelihood of subscription, if available. That survey shows that while 51% of Arkansans don't have broadband, 29% have never used a computer. That relates to the fact that 30% of all respondents said they would not subscribe to broadband service even if it were available and the cost was affordable. The survey showed that the elderly were infrequent users. Also, those with low incomes and less education were nonusers.

Connect Arkansas is a division of Arkansas Capital Corp, a nonprofit business development company. Arkansas Capital CEO C. Sam Walls is quoted as saying "educating our population and our leadership that [broadband service] is a necessary component of our lives is the most important mission." Only by increasing demand will Arkansas draw the millions of dollars in investments from service providers to expand deployment. He said, "Service providers have demonstrated throughout the nation that they are willing to spend hundreds of millions of dollars on their infrastructure when demand is present." See Innovate Arkansas Article, Connect Arkansas Aims To Expand Broadband <http://innovation.arkansasbusiness.com>. The survey may be found at <http://connect-arkansas.org/files/2010/01/Connect-AR-Broadband-Survey.pdf>.

Further, AECC believes that where there is a regulatory requirement to serve (i.e. certificated areas for the carriers and a requirement to provide service when requested) there will be a natural market driven transition from traditional communications services to broadband service. As an example, CenturyLink, which serves a significant portion of Arkansas, reports that at year end 2009, 93% of its Arkansas access lines are DSL-Enabled (See CenturyLink Statistics found on its corporate website at www.centurylink.com). Additionally, CenturyLink offers HD video to its subscribers via satellite dish. AECC believes that AT&T and other ILECs are similarly situated with respect to their ability to provide DSL and other services in Arkansas.

Also significant is the fact that where ILECs have existing facilities on cooperative poles, there is no increase in pole rents under traditional joint use agreements for new/additional broadband cable facilities. Similarly, under traditional license agreements, where new facilities can be safely and compliantly installed by overlashing, there is no increase in pole rental for the use of cooperative poles to provide broadband services. In those cases, the cost of pole attachments is already covered under the communications companies' current business model.

Thus, it is the economics, not of pole attachment rates, but of demand and density that will lead to deployment of broadband to rural Arkansas. Any analysis will reveal that pole attachment costs are an extremely small factor in this equation.

IV. **Our cooperative business model requires that pole attachers must pay their own way.** The cooperative way is one of keeping costs to our members low and providing electric service as economically as possible given the fact that rural areas do cost more to serve due to the lack of density. Our members are our owners and provide the capital to operate the cooperative. We equitably allocate costs and serve in an "at cost" manner. If cooperatives cannot recover costs associated with providing pole attachments, then our members must pay the unrecovered costs in the form of higher rates. The beneficiaries are the shareholders of the attaching companies. While the Connect Arkansas survey did not differentiate between rural and urban respondents, it is a good bet that a high portion of the low income, under educated, non-internet users are in rural areas served by cooperatives. If that is true, they are unlikely to be purchasers if service is extended. That will mean that they are subsidizing extension of a service which not only doesn't benefit them, but costs them more in higher electric rates.

Pole attachers are already driving a hard bargain and cooperatives are not recovering their costs. NPRM just compounds the damage.

In conclusion, we have the same goal of universal broadband, but the NPRM's pole attachment proposals are wrong "solutions." The cooperatives and the FCC are on the same side of providing broadband service opportunities to rural consumers. Rushing the make-ready procedures at the expense of safety and reliability and reducing pole attachment rates simply aren't the answers, won't work and worse, will raise rural electric ratepayer's rates for no benefit. In Arkansas the NPRM would have the effect of raising electric rates to many that simply do not

desire the service. Education and increased incomes will prompt the demand. Further, as density increases, companies will find it profitable to extend service. Reduced pole attachment rates will not incentivize companies to extend broadband.

Thank you for the opportunity to offer comments in regard to this proceeding. We urge the FCC to consider our comments along with those from the NRECA to ensure that the Arkansas electric cooperatives are able to provide safe and reliable electricity to our members without subsidizing the communications companies attached to our poles.

Respectfully submitted,

Arkansas Electric Cooperative Corporation

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